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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/046,309      | 01/16/2002  | Sergey N. Razumov    | 59036-028           | 5567             |

7590 08/18/2005  
McDERMOTT, WILL & EMERY  
600 13th Street, N.W.  
Washington, DC 20005-3096

EXAMINER

FADOK, MARK A

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3625

DATE MAILED: 08/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/046,309             | RAZUMOV, SERGEY N.  |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Mark Fadok             | 3625                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 May 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 19-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 and 19-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 April 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) -<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)               |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Response to Amendment***

The examiner is in receipt of applicant's response to office action mailed 2/17/2005, which was received 5/17/2005. Acknowledgement is made that no changes were made to the claims leaving claims 1-17 and 19-36 as pending in the instant application. The applicant's arguments have been carefully considered, but were not found to be convincing therefore the previous rejection modified as need to address applicant's requests is provided below:

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1,2-17,19-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ghazarian (US PGPub 2002/0089434) in view of Official Notice.**

**In regards to claims 1,2-17,19-36**, Ghazarian teaches all of the claimed features such as electronic tracking of packages to maintain security through personnel, vehicle and package identification, except as follows:

**In regards to claim 1**, Ghazarian teaches delivery of products, but does not specifically mention that there is an order processing system for receiving customer orders. It was old and well known at the time of the invention to place electronic orders for product then have them shipped. It would have been obvious to a person having ordinary skill in the art to include receiving orders, because this includes a majority of the business that delivery people have (fulfilling orders) and would therefore increase revenues by including receiving orders that will eventually be delivered.

**In regards to claim 3**, Ghazarian teaches tracking products and packages, but does not specifically mention that the product in the containers being shipped is a food product. Since the limitation of food product does not impart any functionality this limitation is considered to be non-functional descriptive material (see MPEP 2106(b)) and is therefore not considered to provide any patentable distinction. The examiner contends that the system would work equally well with the shipment of any product.

**In regards to claims 19,22-24,and 31-36**, Ghazarian teaches tracking products in a storage and receiving/shipping area, but does not specifically mention all the individual storage and pick up features of the instant claims. The storage and pickup features of the subject claims were old and well known in the art at the time of the invention. It would have been obvious to a person of ordinary skill in the art to include any number of security and customer pickup convenience methods because this would provide an additional means for tracking the product while at the facility and assure that

unauthorized individuals were not picking up the secure product, thus improving the efficiency of the system.

### ***Response to Arguments***

Applicant's arguments filed 5/17/2005 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references because Ghazarian does not disclose order process, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, although the reference does not teach ordering the product, as stated by the examiner, it would have been well within the skill of an artisan in the art to utilize a shipping method to deliver the product that had been sold (see also page 1, last paragraph of the specification where applicant specifically states that the invention is not limited to food products).

The applicant requests a reference to support the taking of Official Notice the combination of order taking with shipping and tracking of the same order. In response, the examiner introduces Schutz et al (US PgPub 2002/0030854). Shultz teaches combining the functions of purchasing, tracking and shipping (summary). One skilled in the art would be motivated to combine these disparate functions, since it would "result in faster delivery (next day rather than 3-6 days), resulting in fresher product and less inventory" (page 2 paragraph 0022).

The applicant argues the examiners claim that the limitation of "food products" is nonfunctional. As the applicant has pointed out, the computer program and its outcome is not affected by the type of data, (items being shipped) and would work equally well with any type of item (data) that was being shipped within the context of the computerized method of the instant claims.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., specific features that distinguish the shipping of the food product from the shipping and packaging of any other product) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant submits that the examiner did not point out specifically where in Ghazarian the disclosed features are cited. The examiner notes that a strict "mapping" of the cited reference is not required. CFR 1.104(c)(2) states, "In rejecting claims for want of novelty or obviousness, the examiner must cite the best reference at his or her command. When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent must be clearly explained and each rejected claim specified." The examiner contends that the reference cited describes only one invention and is not considered complex, therefore, identification of all the claimed feature locations in Ghazarian is not considered necessary.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mark Fadok** whose telephone number is **(571) 272-6755**. The examiner can normally be reached Monday thru Thursday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **(571) 272-7159**.

Art Unit: 3625

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **receptionist** whose telephone number is **(571) 272-3600**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

**Alexandria, Va. 22313-1450**

or faxed to:

**(571) 273-8300** [Official communications; including

After Final communications labeled

"Box AF"]

**(571) 273-6755** [Informal/Draft communications, labeled

"PROPOSED" or "DRAFT"]

A handwritten signature in black ink, appearing to read 'Mark Fadok', with a long horizontal stroke extending to the right.

Mark Fadok

Primary Examiner